



**To the Honorable Council
City of Norfolk, Virginia**

March 25, 2014

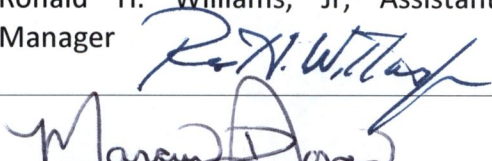
From: Steven Anderson, Director of Development

Subject: Land Disposition and
Development Contract with Howerin
Construction Corp.

Reviewed: Ronald H. Williams, Jr, Assistant City
Manager

Ward/Superward: Ward 4/
Superward 7

Approved:



Marcus D. Jones, City Manager

Item Number:

PH-9

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Howerin Construction Corp.

III. **Description**

This ordinance seeks City Council approval of a land disposition and development contract by and between the City of Norfolk (the "City") and Howerin Construction Corp. ("Howerin") for six parcels of real property containing 0.84 acres, more or less, located on Church Street between Washington Avenue and Johnson Avenue.

IV. **Analysis**

- In 2006, City Council amended the City's budget and authorized Capital Improvement Program funds to be set aside to create the Huntersville Model Block Program (the "Program"). Under the Program, City Council sought to afford the City funds to improve and acquire property in the Huntersville neighborhood.
- Since 2006, the City has worked with the Huntersville neighborhood to ensure that the Program's funds met their intended purpose and also provided a catalyst for additional development in this area.
- On the six parcels of real property, Howerin intends to construct a mixed use building, including thirteen (13) residential apartment units and approximately 7,400 square feet of commercial space.
- PlanNorfolk calls for single family urban development. However, it is adjacent on the north and south to a multifamily corridor general plan designation (R-10) with townhouses and the project would meet PlanNorfolk2030's overall objectives.

V. Financial Impact

- The City's conveyance of the six parcels to Howerin would enable this property to be placed onto the City's real estate tax rolls. (Estimated \$19,000 in real estate taxes annually.)
- The City will provide the six parcels to Howerin at no cost.
- Under the Program, the City will provide up to \$853,000 in improvement costs to Howerin for the proposed project. (Howerin will provide the difference – \$1.2 million – in order to complete the proposed project.)

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of Development, the City Attorney's and City Manager's offices.

mr3/18/14

Form and Correctness Approval

By 
Office of the City Attorney

Contents Approved:

By 
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LAND DISPOSITION AND DEVELOPMENT CONTRACT WITH HOWERIN CONSTRUCTION CORP. FOR SIX PARCELS OF REAL PROPERTY CONTAINING 0.84 ACRES, MORE OR LESS, LOCATED ON CHURCH STREET BETWEEN WASHINGTON AVENUE AND JOHNSON AVENUE.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and provisions of the Land Disposition and Development Contract (the "Contract") between the City of Norfolk, as seller, and Howerin Construction Corp. ("Howerin"), as purchaser, a copy of which is attached hereto, under which the City of Norfolk agrees to transfer to Howerin all those certain parcels of real property consisting of 0.84 acres, more or less, and located on Church Street between Washington Avenue and Johnson Avenue, as described and as shown on Exhibits A1 and A2 of the Contract, and Howerin agrees to construct on the property a mixed use building, including thirteen (13) residential apartment units and approximately 7,400 square feet of commercial space, upon the terms and conditions set forth therein, are hereby approved.

Section 2:- That the City Manager is authorized to correct, amend, or revise the Contract, as he may deem necessary in order to carry out the intent of the Council and to execute the Contract, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

LAND DISPOSITION AND DEVELOPMENT CONTRACT

BY AND AMONG

THE CITY OF NORFOLK, VIRGINIA

AND

HOWERIN CONSTRUCTION CORP.

Article I	-	DEFINITIONS OF TERMS.....	3
Article II	-	AGREEMENT TO CONVEY AND DEVELOP PROPERTY	5
Article III	-	CLOSING AND PURCHASE PRICE.....	20
Article IV	-	ADDITIONAL COVENANTS	27
Article V	-	PROGRESS REPORTS.....	29
Article VI	-	MODIFICATIONS FOR LENDER	29
Article VII	-	ADDITIONAL OBLIGATIONS OF CITY.....	29
Article VIII	-	EVENTS OF DEFAULT AND REMEDIES	30
Article IX	-	ASSIGNMENT LIMITATIONS	33
Article X	-	MISCELLANEOUS	33
Exhibit "A1"	-	LEGAL DESCRIPTION OF THE "PROPERTY"	
Exhibit "A2"	-	PLAT	
Exhibit "B"	-	DEVELOPER'S PROPOSAL	
Exhibit "C"	-	REIMBURSABLE IMPROVEMENT COSTS	

LAND DISPOSITION AND DEVELOPMENT CONTRACT

THIS LAND DISPOSITION AND DEVELOPMENT CONTRACT ("Contract"), is made this ____ day of _____, 2014, by and between the CITY OF NORFOLK, VIRGINIA ("City"), a municipal corporation of the Commonwealth of Virginia, and HOWERIN CONSTRUCTION CORP., a Virginia corporation ("Developer"). The parties to this Contract may be referred to herein collectively as the "Parties" or individually as the "Party".

RECITALS:

A. Under the leadership of the City Council of the City of Norfolk, the City has embarked on a plan to maintain, retain, improve and expand quality, accountable residential developments in the City, to cooperate in projects that increase both temporary construction and permanent jobs in the City, and to provide catalysts for neighborhood stability, which enhances quality of life in the City.

B. The City desires to see a project of specific size, high quality design, and quality materials constructed by private developers on those certain parcels of real property conveyed to the City from Norfolk Redevelopment and Housing Authority ("NRHA") by Special Warranty Deed, dated February 16, 2007 (the "Property"), which parcels are more fully described on Exhibit "A1" attached hereto and made a part hereof and shown on the plat attached hereto as Exhibit "A2".

C. Negotiations by the Parties have produced this agreement for the Developer to construct, furnish, and equip a three story mixed use building on the Property, including thirteen (13) residential units and approximately 7,400 square feet of commercial space, along with parking facilities and other improvements (the "Project"). The Project is shown and described in detail in Developer's Proposal, as hereinafter defined, a copy of which is attached here as Exhibit "B".

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained, the Deposit which has been received by City and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS OF TERMS

When used in this Contract with an initial capital letter or letters, each of the following terms shall have the meaning set forth below.

(a) "Affiliate" of Developer means any legal entity, which controls, is controlled by, or is under common control with another entity with the Developer.

(b) "City" means the City of Norfolk.

(c) "Substantially Complete" or "Substantial Completion" means, with respect to the Project, the date when the construction of the building is sufficiently completed so as to permit use of the building for the purposes for which it was intended and a certificate of occupancy has been issued for all the component uses, which date may precede the full completion of all punch-list items, landscaping and similar design and development functions.

(d) "Contractors" means the general contractors and subcontractors for construction of the Project.

(e) "Deposit" means the sum of Thirty Thousand and 00/100 Dollars (\$30,000.00) to be paid by Developer to City at the time of execution of this Contract. **[SUBJECT TO REVIEW AND APPROVAL OF DEVELOPER/DEVELOPER'S COUNSEL]**

(f) "Developer's Proposal" means Developer's proposal to the City regarding the Project, dated October 4, 2013, with supporting documentation, such proposal having been accepted by the City.

(g) "Development Budget and Timeline" means a budget and timeline, prepared by Developer and approved by the City pursuant to Section 2.10 hereof, for development of the Project on such schedule as is reasonably required to achieve the Construction Completion Deadline, as hereinafter defined, set forth in Section 2.10 hereof.

(h) "Due Diligence Period" means the one hundred eighty (180) day period more fully described in Section 2.1.

(i) "Financing Commitment" means a commitment or commitments reasonably satisfactory to the City, which has or have been accepted by Developer from one or more equity investors or institutional lenders who are approved by the City, to finance the construction of the Project. In order to constitute a Financing Commitment under this definition, a commitment must be duly authorized by the issuer, and must be in substantially the same form and level of detail typically utilized by a prospective lender or investor in similar transactions, including requirements for Closing, as hereinafter defined, and conditions thereof; and, in the case of loan commitments, setting forth the proposed principal amount, interest rate, amortization terms, collateral or guaranty requirements, maturity date, improvements to be constructed, and the expiration date of the commitment. Notwithstanding anything herein to the contrary, the City hereby accepts Citizens National Bank of Windsor, Virginia as an approved institutional lender.

(j) "Outside Closing Date" means one (1) year from the date of full execution of this Contract by the parties.

(k) "Unavoidable Delay" means a delay due to war, riots, civil commotion, strikes, labor disputes, embargoes, natural disaster, Acts of God or any other cause or contingency similarly beyond the control of the Parties or the Contractors.

ARTICLE II
AGREEMENT TO CONVEY AND DEVELOP PROPERTY

Section 2.1. “As Is”, Development, Design and Construction of Project.

The City will convey Property to Developer by special warranty deed which shall be good and marketable and free of any liens, encumbrances, or other title defects which would prohibit or impair the use of the Property for the purposes contemplated by this Contract. Within sixty (60) days after the date of this Contract, Developer, at its expense, shall obtain a commitment for title insurance on the Property. Developer shall provide a copy of such title report/commitment to the City along with any objections thereto within fifteen (15) calendar days after Developer's receipt of such report/commitment. The City shall have a reasonable time to cure any title defects which are not acceptable to Developer and/or its lender. The foregoing notwithstanding, the City shall have the option of declining to cure any defect by providing written notice thereof to Developer within fifteen (15) days after receipt of written notice of such defect and a copy of Developer's title commitment, and, if the City does decline to cure any defect or does not cure any defect that it has agreed to cure, the Developer shall have the right to terminate this Contract at any time prior to the expiration of the Due Diligence Period and to receive the return of the Deposit as its exclusive remedy for termination of this Contract and any related claim. Developer will accept the Property from the City, subject to the terms and conditions hereinafter set forth. Except as expressly set forth in this Contract, Developer is accepting the use and conveyance of the Property "as is." Developer shall have one hundred eighty (180) days after the date of execution of this Contract to obtain the necessary information, assessments, studies, and the like which are necessary to determine if Developer wants to proceed with construction of the Project and to exercise its rights of entry under Section 4.1 hereof (the "Due Diligence Period"). In the event Developer determines the Property is unsuitable for constructing the Project, its sole remedy shall

be return of its Deposit and termination of this Contract, which termination may be effected by giving written notice thereof to the City in accordance with the terms hereof prior to the end of the Due Diligence Period. Each Party shall be responsible for its costs of closing. Title to the Property will not be conveyed before the Developer closes on the financing for the construction of the Project and the terms and the source of the financing are acceptable to the City. Developer shall be responsible for any demolition.

The City shall not be obligated to any extent under this Contract until City Council has approved this Contract, any necessary notices, advertisements and/or hearings have been held, and an ordinance has been adopted approving this Contract.

Section 2.2. Restrictive Covenants.

The restrictive covenants contained in this Section 2.2 ("Restrictive Covenants") are intended and designed to operate as covenants binding upon Developer and its Affiliates and their successors and assigns. The Restrictive Covenants are intended for the benefit of the Property provided that only the City and any successor or assignee of the City that is a local governmental agency and the United States of America, with respect to Subsection 2.2(d), shall have the right, power and authority to enforce the Restrictive Covenants; and provided, further, that the City shall have the right, power and authority (without the necessity of obtaining the consent of Developer) to waive compliance by Developer with any of the Restrictive Covenants whenever it makes a determination, in its reasonable discretion, that such non-compliance or default does not materially interfere with the objectives of the City with regard to development. In addition to, but not in lieu of, any other right or remedy for breach of any one or more of the Restrictive Covenants, the City shall be entitled to seek injunctive relief, without necessarily showing monetary or special damages and without posting bond or security for a bond for the award of a permanent injunction. The

violation of any of the foregoing covenants, and the exercise of any right or remedy for breach of any of such covenants, shall not destroy, impair or otherwise affect the lien of any recorded instrument given by Developer to secure repayment of a loan or loans made for the purpose of providing funds for improving the Property. The Parties recognize that the development and operation of the Property in a manner which is in the best interest of both Parties may from time to time require the confirmation, clarification, amplification or elaboration of the Restrictive Covenants in order to deal adequately with circumstances, which may not now be foreseen or anticipated by the Parties. The Parties, therefore, reserve unto themselves the right to enter into such interpretive, implementing, amendatory or confirmatory agreements from time to time as they may deem necessary or desirable for any such purpose without obtaining the consent or approval of any person not a party to this Contract, except as may be expressly otherwise provided in this Contract.

The City has determined, in the exercise of its legislatively delegated discretion, that in order to carry out the objective of maintaining, retaining, improving and expanding existing development, and to set a prevailing high standard in aesthetics, public policy is best served by the imposition of conditions and restrictions upon the improvement, use, and maintenance of vacant land which is intended for development by private enterprise. To that end, it is hereby specified that, as part of the consideration for this transaction, the use of the Property to be conveyed is expressly subject to the following covenants, restrictions, limitations and conditions, which are to be imposed as covenants running with and binding upon the aforesaid Property and Project:

(a) The Property and Project shall not be used for industrial purposes, with the exception of parking, but shall initially and, for at least a period of forty (40) years from

the date of Closing, shall continue to be used for mixed commercial purposes, including retail and residential.

(b) There shall not be effected or executed any agreement, lease, covenant, conveyance or other instrument whereby the sale, lease or occupancy of the Property or Project is restricted upon the basis of race, creed, color, religion, sex, national origin, disability or familial status.

(c) Developer will comply with all state and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, creed, color, religion, sex, national origin, disability or familial status in the leasing or occupancy of the Property, or any improvements thereon, including the Project.

(d) Developer agrees, on its own behalf and on behalf of its successors and assigns, not to discriminate upon the basis of race, creed, color, religion, sex, national origin, disability or familial status in the sale, lease, rental, use or occupancy of the Property or any improvements thereon, including the Project. This covenant being given for the benefit of the public, the United States of America is expressly recognized as a beneficiary thereof and is entitled to enforce it for its own benefit or that of the public.

(e) Coal shall not be used for heating or developing fuel or for any other operation on the Property.

(f) Any land area within the Property not occupied by structures, hard surfacing, or vehicular driveways shall be kept planted with grass, trees and plants and/or shrubbery and shall be maintained in a healthy condition and neat appearance. In the event of a default by Developer, its successors and/or assigns, in the planting and/or maintenance obligations set forth in this Section 2.2(f), which default continues for a period of ten (10) business days after

receipt by Developer of written notice thereof, the required planting and maintenance work may be completed by the City at the sole cost and expense of Developer, its successors and assigns, from time to time and in keeping with this covenant, and Developer shall reimburse City for the costs thereof within thirty (30) days after receipt of an invoice therefor. However, if the asserted default under this Section 2.2(f) is reasonably susceptible of cure, but not within such ten (10) day period, then Developer shall be permitted a reasonable time (as determined in the reasonable discretion of the City), but in no event longer than an additional sixty (60) business days, to cure such default provided that Developer diligently and continuously pursues such cure.

(g) Developer agrees, on its own behalf and on behalf of its successors and assigns, that the Project and its appurtenant premises will be maintained in a first class and sound condition and with a neat and well maintained appearance. Necessary repairs, maintenance and upkeep of the Project will be performed so as to preserve the attractive appearance, physical integrity, and the sanitary and safe condition of the buildings and other improvements. In the event of a default by Developer, its successors and/or assigns, in the repair, maintenance and/or upkeep obligations set forth in this Section 2.2(g), which default continues for a period of thirty (30) days after receipt of written notice thereof by Developer, the required repairs, maintenance and/or upkeep may be completed by the City at the sole cost and expense of Developer, its successors and assigns, from time to time and in keeping with this covenant, and Developer shall reimburse City for the costs thereof within thirty (30) days after receipt of an invoice therefor. However, if the asserted default under this Section 2.2 (g) is reasonably susceptible of cure and Developer commences to cure such default within the initial thirty (30) day cure period and thereafter

diligently and continuously pursues such cure, then Developer shall be permitted up to an additional sixty (60) business days to cure such default.

(h) All exterior walls shall be constructed of permanent materials impervious to deterioration in appearance, such as stone, exposed aggregates, brick, block, pre-cast panels, glass, hardiplank, or EFIS (exterior finishing insulation systems). All roof structures and appurtenances in excess of six (6) inches in diameter and twelve (12) inches in height shall be shielded or screened from observation from the same elevation. Such shielding or screening shall be with materials compatible and in harmony with the roof and/or side walls.

(i) Any service area, facility or equipment located on that side of the Project site which is adjacent to a public right-of-way is to be enclosed or adequately screened. The materials used for the enclosures and screens shall be consistent with the design of the Project.

(j) No landscaping, improvements or structures, whether temporary or permanent in nature, shall be constructed, commenced or erected on the Property unless and until the plans, working drawings, specifications and materials therefor have been approved in writing by the City. All such reasonable requests shall be made in writing to the City's Department of Planning (and any other City department as then required by applicable City law or procedures), with a copy provided to the Director of Development in accordance with Section 10.17 hereof.

(k) Gas, electric and other utility services shall be underground to the Project from the main distribution. No utility line or connection to any utility line at or above ground level shall be permitted.

(l) The covenants under Subsections (a), (e), (f), (g), (h), (i), (j) and (k) shall expire forty (40) years after the date of this Contract.

(m) The Property is subject to the restrictions set forth in that certain Special Warranty Deed between NRHA, as the grantor, and the City, as grantee, dated February 16, 2007, a copy of which is attached hereto as Exhibit "A".

It is intended and agreed hereby that the Restrictive Covenants under this Section 2.2 shall be covenants running with the land and that they shall in any event, and without regard to technical classification or designation, legal or otherwise be binding upon the City and Developer, and its successors and assigns, as the case may be.

Section 2.3. Title Insurance.

At Closing, Developer shall obtain, at its expense, an ALTA Owner's Policy of Title Insurance in the amount of the value of the Property or such other amount as required by its lender.

Section 2.4. Design of Project.

In accordance with Section 2.7 below, the design and materials of the Project shall be subject to the City's design review process under Section 32-63 of the Code of the City of Norfolk. The Project will consist of the buildings, facilities and elements described in Developer's Proposal. The design of the apartments and commercial/retail space to be constructed on the Property and the construction materials used within will be of at least the same or similar quality of other first class residential and/or commercial/retail projects approved by the City on property formerly owned by the City.

Developer shall submit the preliminary plans to the Planning Director (a) when design is approximately 10% complete, (b) when the design is 90% complete and (c) when the design is sufficiently complete such that Developer's contractor can proceed with construction (the "Final Plans"). Developer may not proceed with construction until the Final Plans for the Project

are approved by the Planning Commission and, in order to enforce this Section 2.4, the City shall be entitled to seek injunctive relief without the necessity of showing monetary or special damages and without posting bond or security for a bond for the award of a permanent injunction. The City's review will include confirmation that the design at the 90% stage and the Final Plans are in substantial conformance with the previous plans provided or properly modified in accordance with this Contract. Notwithstanding the foregoing, upon prior written notice to the City setting forth in detail the changes to be made and the reasons therefor, Developer shall have the right to make changes in the design and construction of the Project to the extent required to meet applicable codes, rules, regulations, statutes and ordinances. Developer must also obtain all other approvals required by the Norfolk City Code and other applicable laws and regulations. If, prior to Closing, Developer, despite using commercially reasonable efforts, is unable to obtain approval by the City of the plans for the Project and all other governmental approvals and permits required to commence construction of the Project, Developer may terminate this Contract by giving the City written notice thereof prior to the Closing, in which event the City shall refund the Deposit to the Developer.

Section 2.5 Construction and Design of Parking.

Developer shall be responsible for the design, construction, and equipping of the parking areas on the Project in accordance with Developer's Proposal and applicable zoning requirements.

Section 2.6. Relocation and Construction of Utilities.

Developer shall be responsible for the relocation of any utilities which is necessitated by the construction of the Project on the Property and for bringing and connecting utilities to the Project, and all costs thereof shall be paid and borne by Developer. In addition,

Developer shall cause all electric, telephone and other utility lines for the Project to be placed underground within public rights of way or utility easements located within the Property lines. City agrees that all utilities are currently at or will be brought to the boundary line of the Property by the City.

Section 2.7. City's Review Procedures.

The City shall review the design submissions within thirty (30) days of its receipt of the same, and shall give written notice to Developer within such thirty (30) day period of its determination that either (a) the same are approved as complete in accordance with the terms of this Contract, (b) that such submissions are incomplete or otherwise fail to comply with the terms of this Contract, and/or (c) that such submissions must be modified. If the City determines that the Project design documents submitted to it hereunder are incomplete or otherwise fail to comply with this Contract or must be modified in accordance herewith, it shall disapprove them or request such modification and shall, in its notice thereof to Developer, set forth with specificity the reasons for the failure to comply and/or the nature of the modification being requested. After correcting and/or modifying and completing the Project design documents in accordance herewith, Developer shall resubmit the Project design documents to the City within thirty (30) days after such notification from the City. The City shall, within thirty (30) days of the receipt of such revised Project design documents, give notice to Developer whether it approves or disapproves or requires further modification of the Project design documents and, if it disapproves or requests further modifications, it shall set forth the specific reasons for such disapproval or requested modifications in its notice thereof to Developer. Each further revision and resubmission of any of the Project design documents by Developer, and each further review and notice of approval or disapproval or

request for modification of any of the Project design documents by the City shall be done or made pursuant to the procedures hereinabove set forth.

Section 2.8. Modifications of Design by Developer.

If Developer wishes to make modifications to the design of the Project, it shall submit such proposed modifications to the City for review and approval. Any such submission shall clearly identify all changes, omissions and additions as compared to the previously approved Project design documents. If the City determines, in its reasonable judgment, that the proposed modifications are acceptable, the City shall so notify Developer, the Project design shall be deemed to incorporate the modifications that have been approved by the City, and Developer shall perform its obligations under this Contract in accordance with the Project design, as modified. If the City determines, in its reasonable judgment, that the proposed modifications are not acceptable, the City shall so notify Developer, specifying in reasonable detail in what respects such proposed modifications are not acceptable, and Developer shall either (a) withdraw the proposed modifications, in which case construction of the Project shall proceed on the basis of the Project design previously approved by the City, or (b) revise the proposed modifications in response to the City's objections and resubmit such modifications to the City, within thirty (30) days after receipt of such notice of objections, for review and approval. Notwithstanding anything in this section to the contrary, to the extent that any of Developer's requested modifications to the design of the Project are required by the City Planning Commission, and the requested modifications are in conformity with the Planning Commission requirements, the modifications shall automatically be deemed accepted by the City and the Project design shall be deemed to incorporate the modifications; the Developer shall perform its obligations under this Contract in accordance with the Project design, as modified. **[SUBJECT TO FURTHER NEGOTIATION]**

Section 2.9 Rezoning.

Promptly after the execution of this Contract, the Developer shall apply for the rezoning of the Property to a zoning classification that permits the use of the Property as contemplated in the Developer's Proposal.

Section 2.10 Construction Schedule.

The Parties desire that the Project be completed on or before the date that is _____ () after commencement of construction. Developer shall commence construction of the Project on or before that date which is sixty (60) days after the date of Closing or final approval of the Project plans, whichever is later (the "Construction Commencement Deadline"). Developer shall provide written notice to the City of the date of the commencement of construction within five (5) business days after such commencement. The Project shall be Substantially Complete in a good and workmanlike manner in accordance with the Final Plans and a Certificate of Occupancy shall have been obtained by Developer no later than that date which is _____ () months after the date of commencement of construction, subject only to extensions for Permitted Delays, as hereinafter defined (the "Construction Completion Deadline").

Full completion of all punch-list items, landscaping and similar design and development functions for the Project ("Final Completion") by Developer shall occur within two (2) months following Substantial Completion, subject to Unavoidable Delays. Construction shall be completed by Developer on such schedule as is reasonably required to achieve Substantial Completion prior to the required Construction Completion Deadline. Accordingly, at or prior to submission of the plans for final approval by the City, a Development Budget and Timeline shall

be furnished by Developer to the City's Director of Development for review and approval by the City. The City shall have thirty (30) business days to approve the Development Budget and Timeline and, if not approved by the City within thirty (30) business days, they shall be deemed approved. In the event that the City does not approve the Development Budget and Timeline in whole or in part, the City shall within the thirty (30) business days provide Developer a detailed explanation of the City's reasons for not approving all of part of the Development Budget and Timeline. Such Development Budget and Timeline shall include, without limitation, detailed information, plans, and estimates with respect to all Reimbursable Improvements Costs, as hereinafter defined. The City shall have the right to request additional or more complete information as part of its review of Developer's Budget and Timeline.

Promptly after the execution and delivery of this Contract, Developer shall commence and diligently prosecute all investigations, studies, applications, architectural and engineering work, negotiations, letting and execution, as the case may be, of construction, demolition, and utility relocations or abandonment, contracts or commitments, necessary or appropriate for the commencement of construction in accordance with the terms hereof. Notwithstanding anything in this section to the contrary, Developer shall have the right to make any and all contracts contingent upon Developer Closing.

Section 2.11. Financing Commitment.

At least ten (10) business days prior to Closing, Developer shall provide a Financing Commitment to the City, in form and substance satisfactory to the City, evidencing Developer's financial ability to design, construct and equip the Project and thereafter to maintain, operate and lease the same. The City's approval of such Financing Commitment must be in writing and delivered to the Developer at least three (3) business days prior to Closing. Failure to secure

a Financing Commitment satisfactory to the City in accordance with the terms hereof will permit the City to terminate this Contract. Developer's sole remedy shall be the return of the Deposit.

Section 2.12. Failure to Obtain Financing or to Meet Construction Schedule.

In the event that (a) Developer fails to commence construction as specified in Section 2.10, or (b) construction ceases for ninety (90) consecutive days (other than, in either case, because of a Permitted Delay), the City, shall be entitled, but not obligated, to terminate this Contract upon thirty (30) days prior written notice to Developer, and upon the conclusion of such thirty (30) day period and no cure by Developer, this Contract shall terminate except for the City's remedies as outlined below. In the event a delay in construction of the Project is caused by an Unavoidable Delay, the Construction Commencement Deadline and/or the Construction Completion Deadline shall be extended but only by the number of days of delay caused by such Unavoidable Delay; provided, however, there shall be no extension of the Construction Commencement Deadline and/or the Construction Completion Deadline unless, (x) within five (5) business days after the occurrence of any such Unavoidable Delay, Developer provides written notice to the City of the occurrence of such Unavoidable Delay, (y) within five (5) business days after conclusion of such Unavoidable Delay, Developer provides an additional written notice to the City of the total number of days of such Unavoidable Delay and of the adjusted Construction Commencement Deadline and/or Construction Completion Deadline, and (z) the City agrees to the date(s) of such adjusted Construction Commencement Deadline and/or the Construction Completion Deadline in writing. Any Unavoidable Delay properly documented in accordance with the terms of this Section 2.12 shall be referred to herein as a "Permitted Delay."

In the event this Contract is terminated by the City pursuant to this Section 2.12, the City shall have the right, but not the obligation, to re-enter and take title to the Property, in which event Developer shall immediately (i) execute a deed re-conveying the Property as well as all improvements thereon to the City, subject to any mortgage secured by the Project and to which the Property is subject pursuant to the Financing Commitment ("Mortgage") and further subject to any tenant leases already in place for premises at the Project, and (ii) reimburse the City for any Reimbursable Improvements Costs paid to the Developer by the City pursuant to this Contract (or the fair market value of any improvements completed by the City pursuant to Section 2.10 hereof). In the event the City has the right to terminate this Contract as provided in this Section 2.12, but does not exercise its right to terminate and the Project is Substantially Completed on a date after the Construction Completion Deadline, then Developer shall pay liquidated damages to the City for such delay for each day between the Construction Completion Deadline and the date the Project is Substantially Completed. The amount of liquidated damages for each day of such delay shall be the difference between real estate taxes that would be payable if the Project had been Substantially Completed on the Construction Completion Deadline and the actual real estate taxes that are assessed for the days between the Construction Completion Deadline and the date the Project is Substantially Completed. Developer agrees this provision is a valid and enforceable liquidated damages provision and the City's Real Estate Assessor's assessment of the amount owed by Developer as liquidated damages shall be accepted by Developer as the proper amount.

Section 2.13. Risk of Loss and Insurance.

After Closing, the Developer shall bear the risk of loss on the Property and all improvements thereon, including the Project. Developer agrees that in the event the Project is partially or fully damaged or destroyed prior to Final Completion and occupancy, Developer shall

rebuild the Project at its costs, including the costs of design, construction and equipping same. Failure to commence reconstruction within a reasonable time or failure to complete reconstruction shall entitle City to have the Property reconveyed to City on the terms described in Section 8.2 with respect to a default under Section 2.12(a).

Beginning on the Date of Closing, Developer shall, at its sole expense and cost, keep the Property and all of the improvements, including the Project, on the Property insured, on forms and in companies acceptable to City, for the benefit of Developer and City, in an amount equal to not less than the full insurable value (a) against loss and damage by fire, and (b) against loss or damage from risks covered by standard form of endorsement for use in Norfolk, Virginia. In no event shall the coverage amount be less than the amount it would take to design, construct and equip the Project in the event of partial or complete destruction of the Project. Developer shall maintain such other insurance, including, without limitation, pollution legal liability insurance, as shall be reasonably requested by the City. City shall be named as an additional insured on all policies of insurance until the final certificate of occupancy is issued for the Project.

Prior to Closing, City shall bear the risk of loss of the Property and any existing improvements. However, any improvements thereon are to be demolished by Developer after Closing; therefore loss of all or any part of improvements on the Property prior to Closing in no way requires City to rebuild the existing improvements and shall not affect Developer's obligation to close.

ARTICLE III **CLOSING AND PURCHASE PRICE**

Section 3.1. Time and Place of Closing.

The closing ("Closing") shall take place at Office of the City Attorney, City Hall, 810 Union Street, Suite 900, Norfolk, Virginia 23510, or at any other location in Norfolk agreed

to by the Parties, on a date mutually satisfactory to Developer and the City but in no event later than the Outside Closing Date. In the event of a failure to close on or prior to the Outside Closing Date, this contract shall immediately terminate without further action by the Parties hereto.

Section 3.2. Consideration.

In consideration for the City's conveyance of the Property to Developer and the payment of certain costs of developing the Project by the City, as set forth herein, Developer shall be (a) obligated to design, construct, and equip the Project on the Property at Developer's sole cost and expense (except as otherwise set forth in Exhibit "C") pursuant to the terms of this Contract; and (b) subject to the reverter provisions set forth in this Contract.

[SUBJECT TO FURTHER NEGOTIATION AND REVIEW AND APPROVAL BY DEVELOPER/DEVELOPER'S COUNSEL] The City agrees, within sixty (60) days after receipt of documentation therefor and subject to inspection of the Project by the City to confirm that the phased improvements described in Exhibit "C" attached hereto and made a part hereof (the "Reimbursable Improvement Costs") have been completed by Developer to the City's satisfaction, in its sole and absolute discretion, to reimburse Developer for such Reimbursable Improvements Costs up to the maximum amount of Eight Hundred Fifty-Three Thousand and 00/100 Dollars (\$853,000.00). Documentation supporting such Reimbursable Improvement Costs along with a detailed description of the improvements shall be provided to the City's Director of Development at the address set forth in Section 10.17 hereof. The City shall have the right to request additional or more complete information as part of its review, approval, and/or payment of the Reimbursable Improvement Costs. Documentation shall be submitted by Developer to City at the end of each of four (4) reimbursement phases listed in Exhibit "C". Upon

completion of each reimbursement phase, Developer shall submit invoices for reimbursement in accordance with the terms herewith.

Section 3.3. Conditions of Developer's Obligation to Close.

The obligation of Developer to close hereunder is expressly conditioned upon the fulfillment by and as of the date of Closing of each of the conditions listed below; provided, however, that Developer, at its election, evidenced by written notice delivered to the City prior to or at the Closing, may waive any or all of the following conditions:

(a) Developer shall have the Due Diligence Period to have an environmental assessment, identification of utilities in, on or affecting the Property, and preliminary engineering and any other tests, studies or investigations done at Developer's costs (the "Due Diligence Reports"). In the event the Developer determines, based on the Due Diligence Reports, that the Property is unsuitable for the Project, the Developer's sole remedy is termination of this Contract and return of its Deposit. In no event will the Developer's right to the Due Diligence Reports or to terminate this Contract based on the Due Diligence Reports survive Closing. Within thirty (30) calendar days after the execution and delivery of this Contract, the City shall provide Developer with copies of available documents pertaining to the Property, such as title reports or environmental assessment reports, if any, which were generated for the City at the time when City purchased the Property.

(b) All representations, warranties, acknowledgments and covenants made by the City in this Contract shall be true and correct in all material respects and shall continue to be true and correct in all material respects as of the date of Closing.

(c) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or

shall be in force, that would prevent the use and development of the Project in accordance with this Contract, the zoning, or in accordance with any related agreements to which the City is a party or to which Developer is a party.

(d) The City shall own fee simple title to the Property.

(e) The Property shall have been rezoned to an appropriate classification in accordance with the provisions of Section 2.9.

(f) The City shall have obtained a deed from NRHA that allows the use of the Property for residential purposes. Within thirty (30) calendar days after the execution and delivery of this Contract, the City shall provide to Developer written evidence reasonably satisfactory to Developer that NRHA will allow the use of the Property for residential purposes. **[SUBJECT TO FURTHER NEGOTIATION]** Developer's sole remedy in the event of City's failure to provide evidence of NRHA's willingness to allow use of the Property for residential purposes shall be termination of this Contract and return of the Deposit.

Section 3.4. Conditions of City's Obligation to Close.

The obligation of the City to close hereunder is expressly conditioned upon the fulfillment by and as of the date of Closing of each of the conditions listed below; provided, however, the City, at its election, evidenced by written notice delivered to Developer prior to or at the Closing, may waive any or all of the following conditions:

(a) All representations, warranties, acknowledgments and covenants made by Developer in this Contract shall be true and correct in all material respects, and shall continue to be true and correct in all material respects as of the date of Closing.

(b) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or

shall be in force, that would prevent the use and development of the Property in accordance with this Contract, the zoning, or in accordance with any related agreements to which the City is a party or to which Developer is a party.

(c) Developer will submit to City in accordance with the City's zoning regulations two copies each of (i) the plan of development for the Project and (ii) the application of the foundation permit for the Project;

(d) Developer shall have obtained a Financing Commitment in a form and on terms satisfactory to the City and in accordance with the terms of Section 2.11 and shall have provided to the City appropriate evidence thereof;

(e) A certificate from the Virginia Board of Contractors or other evidence satisfactory to the City that the General Contractor selected by Developer to construct the Project is a registered contractor in good standing with the Virginia Board of Contractors;

(f) Such other documentation including plans and specifications, schematic drawings and renderings of the Project as may reasonably be requested by City to insure the orderly development of the Property;

(g) City shall have approved the proposed Development Budget and Timeline in accordance with Section 2.10;

(h) City shall have approved the Final Plans in accordance with Sections 2.4 and 2.7;

(i) City shall have received a copy of the executed construction contract;

(j) City shall have received proof satisfactory to the City of the insurance required under Section 2.13; and

(k) City shall have obtained a deed from NRHA that allows the use of the Property for residential purposes.

Section 3.5. Failure to Satisfy Conditions.

In the event that any of the conditions of a Party's obligation to close hereunder as set forth in Section 3.3 or Section 3.4 hereof are unsatisfied for any reason, other than as a result of Unavoidable Delay, that Party shall be entitled, but not obligated, to extend the Outside Closing Date by providing written notice to the other Party of such extension and of the duration thereof on or prior to the date of Closing to enable such other Party to satisfy or cause to be satisfied such conditions. If, on the original or any adjourned date of Closing, any condition of the obligation of a Party to close hereunder shall remain unsatisfied and such condition has not been waived by such Party, then such Party shall have the right to terminate this Contract upon thirty (30) days written notice to the other, and unless, during such thirty (30) days written notice to the other, either (a) the Party entitled to terminate shall waive such conditions(s) as provided above and agree to proceed to Closing hereunder, or (b) the Party entitled to terminate may, by written notice to the other Party, terminate this Contract in which event neither Party shall have any further rights hereunder or obligations to the other of any nature hereunder or by reason hereof, except that with respect to a failure to satisfy any condition of the Closing that results from a Party's default under this Contract, the provisions of this Contract pertaining to such default, and to the Parties' respective rights, remedies and obligations in connection with such default, shall be applicable in addition to, or (in the non-defaulting Party's discretion) as an alternative to, the non-defaulting Party's aforesaid right of termination.

Section 3.6. Deliveries at Closing by City.

At the Closing, City will execute and deliver to Developer the following:

(a) A special warranty deed conveying to the Developer good and marketable fee simple title to the Property free and clear of all liens and encumbrances except those permitted by this Contract and subject to the Restrictive Covenants described in Section 2.2;

(b) A certificate to the effect that the City is not a foreign entity subject to the withholding requirements of the Foreign Investment in Real Property Tax Act;

(c) A certified copy of the ordinance adopted by the City authorizing the conveyance of the Property to Developer pursuant to the terms of this Contract;

(d) A 1099 report form pursuant to Section 6045 of the Internal Revenue Code of 1986, as amended;

(e) Form R-5E as required by the Virginia Department of Taxation to evidence that City is a Virginia resident; and

(f) An owner's affidavit with "GAP" indemnity and any other document or instrument required hereunder or reasonably requested by Developer or its title insurance company in order to consummate the transactions contemplated herein.

Section 3.7. Deliveries at the Closing by Developer.

At the Closing, Developer shall execute and/or deliver the following:

(a) Developer shall deliver to the City evidence reasonably satisfactory to the City that Developer has been validly formed as a corporation, is in good standing, and is qualified to do business in the Commonwealth of Virginia and the City of Norfolk.

(b) Developer shall deliver to the City the written opinion of counsel of Developer, in form reasonably satisfactory to the City (assuming that all signatures are genuine, and further assuming that all documents presented to such counsel as copies conform with the originals), stating (1) that Developer is a corporation, duly organized and validly existing under

the laws of the Commonwealth of Virginia; (2) that Developer has the power to enter into the transactions contemplated by this Contract (including, without limitation, entry into this Contract); (3) that all actions by Developer required to be authorized in the transaction contemplated by this Contract have been duly authorized; (4) that this Contract and all documents required to effectuate the transactions contemplated hereby which are to be executed by Developer (including, without limitation, all agreements and instruments to be executed by Developer at the Closing) have been duly executed and delivered by Developer, and constitute binding obligations of Developer, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganizations, moratoriums or similar laws affecting the enforcement of creditors' rights generally and by legal and equitable limitation on the enforceability of specific remedies;

(c) Developer shall deliver to the City resolutions of the Developer's Board of Directors ("Board"), authorizing Developer to consummate the transactions contemplated herein, such resolutions to be in form and substance reasonably satisfactory to the City, executed by the Board's President or Vice-President in their respective capacity and accompanied by a certificate executed by the Board's Secretary; and

(d) Developer shall deliver to the City any other document or instrument required hereunder or reasonably requested by the City in order to consummate the transactions contemplated herein, which document or instrument will be in form and substance reasonably acceptable to the City, including, without limitation, proof of insurance required by Section 2.13 hereof.

Section 3.8. Prorations.

Proratable items relating to the Property will be prorated as of the date of Closing.

Section 3.9. Closing Costs.

City is exempt from grantor's tax on the Deed. Developer will pay all other recording taxes and fees in connection with the recordation of the Deed, the cost of its title insurance commitment and policy, the cost of obtaining the survey and any subdivision plat required, and all other costs incurred in connection with its due diligence investigations of the Property. Each Party will pay its respective attorney's fees.

ARTICLE IV
ADDITIONAL COVENANTS

Section 4.1. Right of Entry.

Prior to Closing, Developer and its agents, representatives and contractors will have the right to enter the Property for the purpose of surveying the Property, conducting soil tests and engineering studies and performing such other examinations as Developer deems necessary to determine the suitability of the Property for its contemplated development. Developer will keep the Property free and clear of all mechanics' liens and will indemnify, defend and hold the City harmless from and against any and all claims, liens, liabilities, damages, losses and costs (including reasonable attorneys' fees) arising from the exercise by Developer of its right of entry under this Section. If the Closing does not occur, Developer will repair any damage to the Property caused by Developer's exercise of such right of entry at Developer's sole cost and expense.

Section 4.2 Survey.

Developer shall be responsible for securing a survey of the Property. Such survey shall be conducted by a surveyor acceptable to Developer and the City, and shall be certified to Developer, the City, and the title company furnishing the title commitment to Developer.

Notwithstanding anything herein to the contrary, the City hereby accepts _____ as an approved surveyor.

Section 4.3. Condemnation.

If before the Closing all or any portion of the Property is taken under the power of eminent domain or is transferred in lieu of such taking and such taking or transfer materially interferes with Developer's contemplated development of the Property, Developer may, at its option, (i) terminate this Contract by notice to the City within thirty (30) days after Developer is notified of such taking or transfer, in which case return of the Deposit shall be the sole and exclusive remedy or (ii) proceed to Closing.

Section 4.4 . Time is of the Essence.

Time is of the essence as to the performance of the terms and conditions of this Contract. To the extent any provisions of this Contract specifically state that time is of the essence, such specific provisions are not intended to mean that time is not of the essence as to the remaining provisions of this Contract.

Section 4.5. Staging Area and Construction Operations.

City does not have any obligation to Developer and/or its contractor to provide a staging area or any particular construction easements for construction of the Project. Developer shall see that any pile driving and similar construction methods are not started before 9:00 a.m. and cease by 6:00 p.m. on weekdays, and are not started before 10:00 a.m. and cease before 5:00 p.m. on weekends and holidays.

ARTICLE V **PROGRESS REPORTS**

In addition to timely construction of the Project, within ten (10) days after receipt of the City's request therefor, Developer shall provide the City with a written progress report that reflects all work done and costs paid on the Project to date and since the date of the prior progress report, if any; provided, however, Developer shall not be required to provide such progress reports more frequently than monthly.

ARTICLE VI **MODIFICATIONS FOR LENDER**

If in connection with obtaining Financing Commitments for this Project, any lender shall request reasonable modifications of this Contract as a condition to such financing, the parties will execute a modification of this Contract, provided that such modification does not increase the financial obligations of the City, or materially and adversely affect any rights of the City created by this Contract.

ARTICLE VII **ADDITIONAL OBLIGATIONS OF CITY**

Upon Final Completion of the Project, but no later than thirty (30) calendar days after issuance of the Occupancy Permit, or similar permit, for the Project, City will furnish Developer with an appropriate instrument certifying that Developer has complied with the provisions hereof relating to the construction of the Project. If City shall, for cause, refuse or fail to provide certification, the City shall, within ten (10) days after written request by Developer, provide Developer with a written statement indicating in adequate detail (a) how Developer has failed to complete the construction of the Project in conformity with this Contract or is otherwise in default, and (b) what measures or acts will be reasonably necessary, in the opinion of the City, for Developer to take or to perform in order to obtain certification.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Default by Developer.

The occurrence of any of the following shall be an event of default by Developer under this Contract:

(a) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

(b) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

(c) The entering of an order for relief against Developer or the appointment of receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of thirty (30) consecutive days;

(d) The failure of Developer to perform or to observe any covenant, obligation, condition or requirement of this Contract not specifically named as a default in this Section 8.1, and the continuation of such failure for thirty (30) days after written notice from City specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30) day period, the failure either (i) to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such effort to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30)-day period, in no event to exceed ninety (90) days after the written notice of default.

Section 8.2. Remedies.

Upon the occurrence and continuance of any event of default described in Section 8.1 or any other breach of this contract, City may elect to terminate this Contract by giving written

notice of such termination to Developer, and this Contract shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination). In the event that termination under this Section 8.2 occurs after Closing, in addition to its other remedies, City may elect to reenter and take back title to the Property, in which event Developer shall immediately execute a deed re-conveying the Property as well as all improvements thereon to the City, subject to any Mortgage and any tenant leases already in place for premises at the Project and Developer shall reimburse the City for any funds advanced by the City to the Developer pursuant to this Contract. In addition to the remedies of termination described above, a non-defaulting Party shall have available to it all other rights and remedies provided in this Contract or at law or in equity. Remedies under this Contract shall be cumulative and not restrictive of other remedies. The prevailing Party in any action or proceeding to enforce the terms of this Contract shall be entitled to recover from the unsuccessful Party all costs and expenses, including reasonable attorney's fees incurred therein.

In the event the termination is because of a default under Section 2.12, the reconveyance of title of the Property and all improvements thereon to the City shall be subject to the City paying, at the time of such conveyance, the Reverter Payment, as hereinafter defined. The "Reverter Payment" shall be an amount equal to ninety-five percent (95%) of the Fair Market Value, as hereinafter defined, as of the date of such notice of termination of all improvements constructed on the Property by Developer to date (without any consideration for the value of the land) less the outstanding principal balance (and all accrued but unpaid interest thereon) under the Mortgage through the date of such notice of termination and less the amount of any Reimbursable Improvement Costs paid to the Developer by the City pursuant this Contract (or the fair market value of any improvements completed by the City pursuant to Section 2.10 hereof that would have

otherwise been Reimbursable Improvement Costs). For purposes of this Section, "Fair Market Value" shall mean the fair market value of the improvements constructed on the Property prior to the date of such termination (without any consideration for the value of the land) as determined by mutual agreement reached within twenty (20) days of the date of notice of termination by the City, or, in the absence of such agreement, by appraisal as follows. If the parties are unable to reach agreement on the Fair Market Value within such twenty (20) day period, then within ten (10) days thereafter Developer shall name one appraiser and the City shall name a second appraiser. The appraisers so chosen will meet within ten (10) days after the second appraiser is appointed and if, within thirty (30) days after the second appraiser is appointed, the two appraisers are not able to agree upon the Fair Market Value, they shall appoint a third appraiser. In the event the two appraisers are unable to agree upon such appointment within ten (10) days after the aforesaid time, then either Party may, as promptly as possible thereafter, request the American Arbitration Association to appoint a third appraiser. The decision of the appraisers so chosen shall be given within a period of thirty (30) days after the appointment of such third appraiser. The decision in which any two appraisers so appointed and acting hereunder concur shall in all cases be binding and conclusive upon the parties. Each Party shall pay the fees and expenses of the original appraiser appointed by such Party and the expenses of the third appraiser, if any, shall be borne equally by the parties. Any appraiser, no matter by whom designated, shall be a member in good standing, with the "MAI" designation, of the Appraisal Institute with at least ten (10) years experience as a real estate appraiser in the Hampton Roads, Virginia area. The City's right to take back the Property is subject to the lien of any Mortgage held by any lender for the financing of the Project and subject to tenant leases already in place for premises at the Project on the date of the notice, with copies of such leases to be provided to the City at the time of re-conveyance of the

Property to the City. In addition to the remedies of termination described above, a non-defaulting Party shall have available to it all other rights and remedies provided in this Contract or at law or in equity. Remedies under this Contract shall be cumulative and not restrictive of other remedies. The prevailing Party in any action or proceeding to enforce the terms of this Contract shall be entitled to recover from the unsuccessful Party all costs and expenses, including reasonable attorney's fees incurred therein.

ARTICLE IX **ASSIGNMENT LIMITATIONS**

Except as otherwise expressly provided herein, prior to Final Completion of the Project, Developer, individually or jointly, may not assign this Contract or any right, title or interest hereunder, to anyone or any entity without the prior written consent of the City.

ARTICLE X **MISCELLANEOUS**

Section 10.1. Low and Moderate Income and Resident Job Opportunities.

Developer shall make every reasonable effort to include provisions in the construction contracts for the Project, and in the leases of space in the Project, (i) requiring the contractor and commercial tenants of the Project to make a good faith effort to see that jobs at the Project are made available to Norfolk residents and to low and moderate income persons; and (ii) prohibiting any contractor or any commercial tenant of the Project from discriminating on the basis of race, color, creed, national origin, age or sex. Developer will cooperate with the City in alerting the contractors and tenants to any training programs or other job opportunity sponsored by the City and will encourage participation in such programs.

Section 10.2. City's Project Representative.

The City hereby appoints Steven J. Anderson or his designate as its representative for the Project who will be responsible for coordinating the City's approvals hereunder.

Section 10.3. No Broker.

Developer and City each represent and warrant that no broker to whom a commission, fee or other compensation is payable is or has been involved in or brought about the transactions contemplated by this Contract. To the extent permitted by applicable law, each of said Parties shall indemnify and hold the others harmless from any and all claims, obligations, liabilities, costs or expense (including reasonable attorneys' fees) incurred as a result of any claim for brokerage commissions, fees or other compensation by any person or entity who alleges having acted or dealt with the indemnifying Party in connection with the Project or the transactions contemplated by this Contract. The Parties' obligations under this Section shall survive the Closing and any termination of this Contract.

Section 10.4. Relationship of Parties.

This Contract is not to be construed to create a partnership or joint venture between the Parties.

Section 10.5. Negotiated Document.

The Parties acknowledge that the provisions and language of this Contract have been negotiated and agree that no provision of this Contract shall be construed against any Party by reason of such Party having drafted such provision of this Contract.

Section 10.6. Governing Law.

This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Virginia. In the event of litigation hereunder, venue shall be in the Circuit Court of the City of Norfolk, Virginia.

Section 10.7. Successors and Assigns.

The agreements, terms, covenants and conditions of this Contract shall be binding upon and inure to the benefit of the City, Developer, and except as otherwise provided herein, their respective successors and permitted assigns.

Section 10.8. Further Assurances.

Each Party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Contract.

Section 10.9. No Amendment.

Neither this Contract nor any provisions hereof may be changed, modified, amended, supplemented, altered, waived, discharged or terminated except by an instrument in writing signed by both Parties and if required by any mortgage document, with the written consent of the applicable lender.

Section 10.10. Survival of Closing.

The provisions of this Contract shall survive the Closing.

Section 10.11. Effectiveness.

This Contract shall not be binding or effective until executed and delivered by the Parties hereto.

Section 10.12. Waiver.

The failure of any Party to insist upon strict performance of any of the terms or provisions of this Contract or to exercise any option, right or remedy contained in this Contract, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, of this Contract nor be deemed to have been made unless expressed in writing and signed by such Party.

Section 10.13. Exhibits.

Each Exhibit referred to in this Contract is incorporated by reference and attached to this Contract.

Section 10.14. Consent and Approvals.

(a) All consents and approvals which may be given under this Contract shall be in writing, as a condition of their effectiveness. The granting of any consent or approval by a Party to perform any act requiring consent or approval under the terms of this Contract or the failure on the part of a Party to object to any such action taken without the required consent or approval shall not be deemed a waiver by the Party whose consent was required or its right to require such consent or approval for any further similar act.

(b) If it is provided that a particular consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably conditioned or delayed and any matter required to be done satisfactorily or to the satisfaction of a Party only be done reasonably satisfactorily or to the reasonable satisfaction of that Party.

Sections 10.15. Interpretation.

For the purpose of construing this Contract, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice

versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation or partnership. Headings of articles and sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular articles or sections to which they refer.

Section 10.16. "Including".

In this Contract, whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the word "including without limitation," and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

Section 10.17. Notices.

All notices or other communications required or desired to be given with respect to this Contract shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the Party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the Party intended to receive such notice or when such Party refuses to accept delivery of such notice. Upon a change of address by either Party, such Party shall give written notice of such change to the other Party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

To City: Marcus D. Jones
City Manager
810 Union Street, Suite 1100
Norfolk, VA 23510

With a copy to: Steven J. Anderson
Director of Development
Department of Development
500 E. Main Street, Suite 1500
Norfolk, VA 23510

With a copy to: Bernard A. Pishko
City Attorney
Office of the City Attorney
810 Union Street, Suite 900
Norfolk, VA 23510

To Developer: Howerin Construction Corp.
4800-B Colley Avenue
Norfolk, VA 23508

With a copy to: Philip R. Trapani, Jr.
431 Granby Street
Norfolk, VA 23510

Section 10.18. Entire Agreement.

This Contract constitutes the entire agreement between the Parties with respect to the Project and supersedes all prior understandings and writings, and this Contract may be amended or modified only by a writing signed by City and the Developer.

Section 10.19. Counterparts.

This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

Section 10.20. Recordation.

This Contract may be recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia.

WITNESS the following signatures:

CITY OF NORFOLK

(SEAL)
Marcus D. Jones, City Manager

ATTEST:

City Clerk

HOWERIN CONSTRUCTION CORP.

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

Sworn to and subscribed before me, a Notary Public in and for the City and Commonwealth aforesaid, by _____,
of the City of Norfolk, and _____,
of the City of Norfolk, this _____ day of _____, 2014.

Notary Public

My commission expires: _____
Notary Registration Number: _____

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

Sworn to and subscribed before me, a Notary Public in and for the City and
Commonwealth aforesaid, by _____, _____ of
Howerin Construction Corp., this _____ day of _____, 2014.

Notary Public

My commission expires: _____
Notary Registration Number: _____

Approved as to contents:

Director, Department of Development

Approved as to form and correctness:

Assistant City Attorney

EXHIBIT "A1"
Special Warranty Deed

SPECIAL WARRANTY DEED

THIS DEED, made this 16th day of February, 2007 by and between NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia, 201 Granby Street, Norfolk, Virginia 23510 (GRANTOR), and the CITY OF NORFOLK, a municipal corporation of Virginia, 1001 City Hall Building, Norfolk, Virginia 23510 (GRANTEE).

WITNESSETH THAT:

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey with SPECIAL WARRANTY, unto the Grantee, the following-described property:

PARCEL ONE:

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon situated in Norfolk, Virginia, and being at the southeast corner of the intersection of Church Street and Washington Avenue in the Huntersville Section of the City; said lot fronting on Church Street forty-three (43) feet four (4) inches and running back eastwardly therefrom between parallel lines and along the south side of Washington Avenue a distance of one hundred (100) feet, being Lot 3, Block 1, as shown on the Plat of Isaac R. Hunter's Farm, admitted to record in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 89, at page 115.

PARCEL TWO:

ALL THAT certain lot, piece or parcel of land, now or formerly known as 1436 and 1440 Church Street, situate in the City of Norfolk, Virginia, and known,

Prepared by Crenshaw, Ware & Martin, P.L.C., Norfolk, Virginia

numbered and designated as Lot Number Two (2) in Block Number One (1), as shown on the plat of Isaac R. Hunter's farm known as "Huntersville", which plat is of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 89, at page 115, and said property being situated on the east side of the old Lambert's Point Road, now Church Street, fronting forty-three (43) feet four (4) inches on said Church Street, and running back between parallel lines a distance of one hundred (100) feet.

PARCELS ONE and TWO being the same property conveyed to Norfolk Redevelopment and Housing Authority by Deed of Leavy Harold, individually, and Leavy Harold and Mildred C. Harold, husband and wife, dated October 7, 2005, recorded in the Clerk's office of the Circuit Court of the City of Norfolk, Virginia as Instrument Number 050042733.

PARCEL THREE:

ALL THAT that certain lot, piece or parcel of land, situate in the City of Norfolk, Virginia, and known, numbered and designated as Lot Number One (1) in Block Number One (1), as shown on the plat of Isaac R. Hunter's farm known as "Huntersville", which plat is of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 89, at page 115, and said property being situated on the east side of the old Lambert's Point Road, now Church Street, fronting forty-three (43) feet four (4) inches on said Church Street, and running back between parallel lines a distance of one hundred (100) feet.

IT BEING the same property conveyed to Norfolk Redevelopment and Housing Authority by Deed of Ralph B. Brickers, divorced, et al, dated June 25, 1998, recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia in Deed Book 3047, at Page 606.

PARCEL FOUR:

ALL THOSE certain lots, pieces or parcels of land, with the buildings and improvements thereon, now or formerly numbered 1410 to 1426 Church Street, in the City of Norfolk, State of Virginia, and bounded and described as follows:

Beginning at a point on the east side of Church Street seventy-five (75) feet north from the northeast intersection of Church Street and Johnson Avenue; thence running north along the east side of Church Street eighty-three (83) feet; thence east and parallel with Johnson Avenue eighty-two and four-tenths (82.4) feet; thence south and parallel with Church Street eighty-three (83) feet; thence west and parallel with Johnson Avenue eighty-two and four-tenths (82.4) feet to the point of beginning; together with all the appurtenances to said land belonging.

IT BEING the same property conveyed to Norfolk Redevelopment and Housing Authority by Deed of Eleanor S. Winslow, dated July 17, 1998, recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia in Deed Book 3057, at Page 431.

PARCEL FIVE:

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, now or formerly numbered 1406 and 1408 Church Street, in the City of Norfolk, State of Virginia, and bounded and described as follows:

Beginning at a point in the eastern line of Church Street, distant fifty (50) feet north from the northeastern intersection of Church Street and Johnson Avenue, thence running north along Church Street, a distance of twenty-five (25) feet; thence east and parallel with Johnson Avenue a distance of ninety (90) feet, more or less, to the eastern side of 708 Johnson Avenue; thence south and parallel with Church Street a distance of twenty-five (25) feet; thence west and parallel with Johnson Avenue a distance of ninety (90) feet, more or less, to the point of beginning on Church Street.

IT BEING the same property conveyed to Norfolk Redevelopment and housing Authority by Deed of Jemal G. Mendelsohn, et al, dated April 14, 1998, recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia in Deed Book 3023, at Page 357.

SAVE AND EXCEPT those portions of Parcels One, Two, Three, Four and Five heretofore transferred or conveyed to the Commonwealth of Virginia for the purpose of widening Church Street or other public streets of the Commonwealth.

PARCEL SIX

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, now or formerly known as 713 Washington Avenue (sometimes heretofore referred to as 713 and 715 Washington Avenue), situate, lying and being in the City of Norfolk, State of Virginia and bounded and described as follows: Beginning at a point on the southern side of Washington Avenue distant Three Hundred Ninety-three and Thirteen One Hundredths (393.13) feet in a westwardly direction from the west side of O'Keefe Street, which said point of beginning is Lettered "A" on a plat entitled "Physical Survey of ## 713 and 715 Washington Avenue for J. Stanley Trice", made November 18, 1935, by the Department of Public Works for the City of Norfolk, Virginia, and attached to and recorded with a Certain Deed of Agreement dated November 1, 1935, and duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Deed Book 339A, at page 43, between Atlantic Security Corporation, Archie Johnson and others; and running thence from said point of beginning southwardly and perpendicular, or nearly so, to Washington Avenue a distance of One Hundred Thirty (130) feet; more or less, thence westwardly and parallel, or nearly so, with Washington Avenue a distance of Seventy-five (75) feet, more or less, to a point; thence northwardly along the fence line as shown on said plat and along said fence line extended in a straight line to a point on the southern side of Washington Avenue distant Seventy-six (76) feet, more or less, in a westwardly direction, from the said point of beginning; and thence proceeding eastwardly along the southern side of Washington Avenue a distance of Seventy-six (76) feet, more or less, to said point of beginning.

IT BEING the same property conveyed to Norfolk Redevelopment and Housing Authority by Deed of Virginia Family Homes, Inc., dated April 25, 2006, recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, as Instrument Number 060017960.

Norfolk Redevelopment and Housing Authority has determined, in the exercise of discretion legislatively delegated to it, that in order to carry out the objectives of its Huntersville II Conservation Project, to prevent recurrence of blight, and to set a prevailing standard in esthetics,

public policy is best served by the imposition of conditions and restrictions upon the use, maintenance and improvement of real estate which is intended for redevelopment by public or private enterprise. To that end, it is hereby specified that, as a part of the consideration for this transfer, the subject land is hereby conveyed expressly subject to the following covenants, restrictions, limitations and conditions, which are hereby imposed as covenants running with and binding upon the land:

- a. The subject property shall be used for municipal purposes and/or for commercial uses.
- b. There shall not be effected or executed any agreement, lease, covenant, conveyance or other instrument whereby the sale, lease or occupancy of the subject property is restricted on the basis of race, creed, color, religion, sex, national origin, disability or familial status.
- c. The Grantee, and its successors and assigns, will comply with all State and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, creed, color, religion, sex, national origin, disability or familial status in the sale, lease, or occupancy of the subject property.
- d. The Grantee agrees on behalf of itself, its successors and assigns, not to discriminate upon the basis of race, creed, color, religion, sex, national origin, disability or familial status in the sale, lease, rental, use or occupancy of the property herein described or any improvements thereon. This covenant being given for the benefit of the public, the United States is expressly recognized as a beneficiary thereof and is entitled to enforce it for its own benefit or that of the public.
- e. The Grantee agrees, on behalf of itself, its successors and assigns, that the subject property, and all improvements constructed on the

subject property, will be maintained in a sound condition and neat appearance. Necessary repairs, maintenance and upkeep will be performed by the Grantee (including its successors and assigns in title) so as to preserve the attractive appearance, the physical integrity, and the sanitary and safe condition of all buildings and structures, and surrounding land comprising the subject property.

- f. Covenants a and e above shall expire forty (40) years after the date of this deed of conveyance.

This conveyance is made expressly subject to the easements, conditions, reservations and restrictions, if any, of record, affecting the said property and constituting constructive notice.

In compliance with the provisions of Section 15.2-1803 of the Code of Virginia, 1950, as amended, this deed is in the form approved by the City Attorney for the City of Norfolk, Virginia, and is accepted by the City Manager on behalf of the City of Norfolk, she having been authorized to so act on behalf of the City of Norfolk by ordinance duly adopted by the Council of the City of Norfolk at the meeting held on April 3, 2007, which approval and acceptance are evidenced by the execution of this deed by the City Attorney and the City Manager, or their duly authorized deputies.

IN WITNESS WHEREOF, Norfolk Redevelopment and Housing Authority has caused these presents to be executed by Shurl R. Montgomery, Executive Director, a duly authorized officer, as of the day and year first set forth above.

NORFOLK REDEVELOPMENT
AND HOUSING AUTHORITY

By: [Signature]
Executive Director

CITY OF NORFOLK

By: [Signature]
City Manager

ATTEST:

[Signature]
City Clerk 05-03-07

Approved as to form and correctness:

[Signature]
Assistant City Attorney

COMMONWEALTH OF VIRGINIA, at-large

CITY OF NORFOLK, to-wit:

I, H. W. Martin, Jr., a Notary Public in and for the Commonwealth of Virginia at Large, do hereby certify that Robert K. Jenkins, ~~SS~~ of Norfolk Redevelopment and Housing Authority, whose name as such is signed to the foregoing instrument, bearing date on the 16th day of February, 2007, has acknowledged the same before me in my City and State aforesaid, this 30th day of March, 2007.

** Acting Executive Director

My commission expires on the 31st day of March, 2007.

Humantia, Jr.
Notary Public

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK, to-wit:

I, *Curthia J. Smith*, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, do hereby certify that Regina V. K. Williams, City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, whose names as such are signed to the foregoing instrument, bearing date on the 16th day of February, 2007, have acknowledged the same before me in my City and State aforesaid, this 3rd day of May, 2007.

My commission expires on the 31st day of August, 2010

Curthia J. Smith
Notary Public

This Deed is exempt from recordation taxes pursuant to Sections
58.1-811(A)(3) and 58.1-811(C)(3), 1950 Code of Virginia, as
amended.

File Nos. 1.680938 and 1.680944

- 8 -

INSTRUMENT #070017784
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
MAY 7, 2007 AT 11:11AM
GEORGE E. SCHAEFER, CLERK
RECORDED BY: OLD

1. The first step is to identify the problem. This involves understanding the current situation and the goals that need to be achieved.



EXHIBIT "B"
DEVELOPER'S PROPOSAL

Howerin Construction Corp

4800 B Colley Ave
Norfolk, VA 23508
757-440-0036

October 4, 2013

Steven J. Anderson: Director
Department of Development
City of Norfolk
500 East Main Street, Suite 1500
Norfolk, VA 23510

Dear Mr. Anderson:

Howerin Construction Corp. proposes to acquire and develop the property on Church Street running between Washington Ave and Johnson Street from the City of Norfolk. We will build a 3-story mixed-use structure with commercial on the first floor and 2 and 3 bedroom apartments on the 2nd and 3rd floor. There will be a 1 bed room accessible unit also on the 1st floor. Each floor will be at least 7000 square feet and have parking to accommodate. There will be generous green space and as much landscaping as possible.


Howerin requests \$853,000 for infrastructure from the City of Norfolk for this project as well as contributing the land at no cost to the developer. Howerin will provide construction and permanent financing for the difference. (Approximately \$1,200,000) Howerin and the City would agree on phased-in payments as Howerin performs the construction of the building. Howerin to provide all up front costs.

Howerin and his agents to be responsible for leasing all spaces both commercial and residential.

We will meet with the Olde Huntersville civic league to determine what goods and services are most desired and try to accommodate .

As you may know Howerin Construction has built upscale townhomes on either side of this property. We have had a vested interest in the Huntersville Church Street area for some time. We see this joint venture as a worthwhile effort to both raise up and jumpstart a part of our city that is deserving.

Sincerely


Robert Howerin (president)



**WASHINGTON & CHURCH STREET
MIXED USE PROJECT**

**HOWERIN
CONSTRUCTION, CORP.**
48008 COLLEY AVE. NORFOLK, VA 23508



**WASHINGTON & CHURCH STREET
MIXED USE PROJECT**

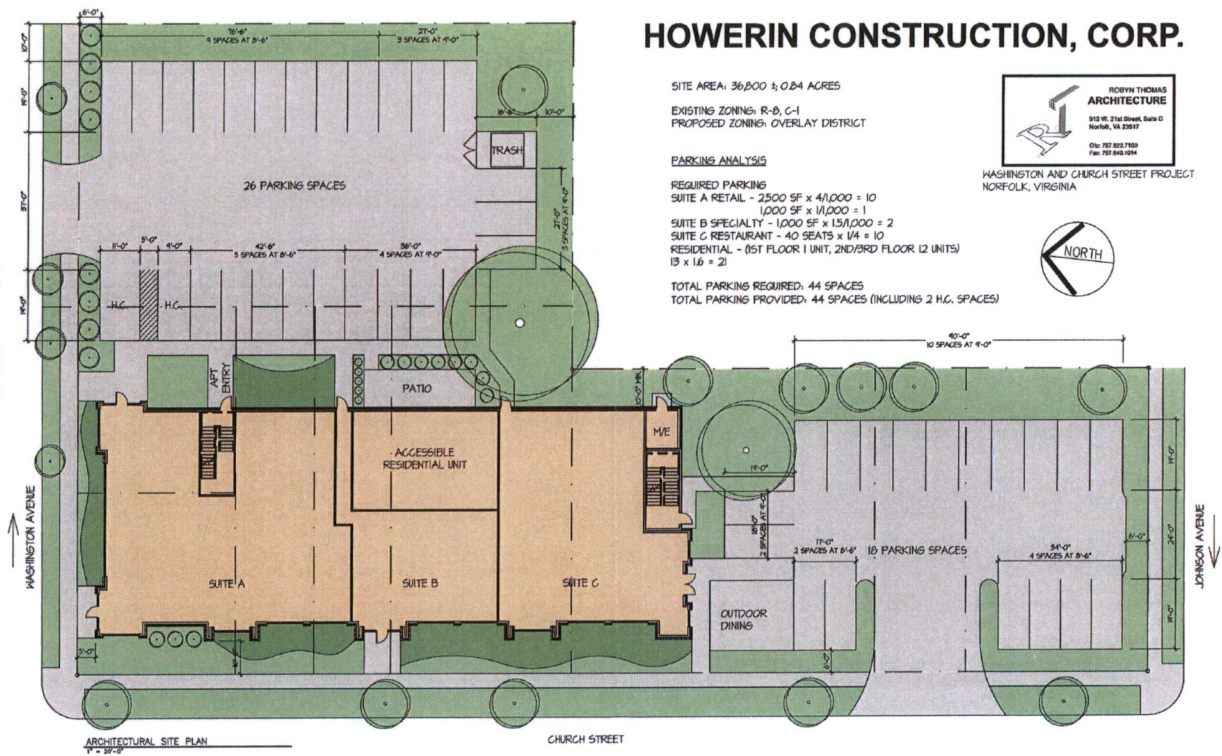
**HOWERIN
CONSTRUCTION, CORP.**
48008 COLLEY AVE. NORFOLK, VA 23508





WASHINGTON & CHURCH STREET MIXED USE PROJECT

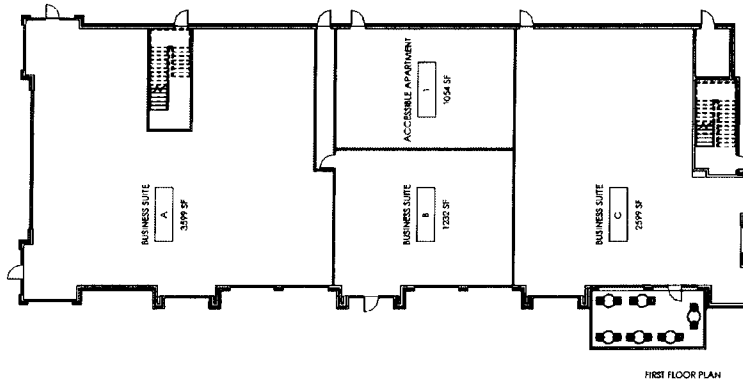
**HOWERIN
CONSTRUCTION, CORP.**
4800B COLLEY AVE. NORFOLK, VA 23508





**WASHINGTON & CHURCH STREET
MIXED USE PROJECT**

**HOWERIN
CONSTRUCTION, CORP.**
4800B COLLEY AVE. NORFOLK, VA 23508

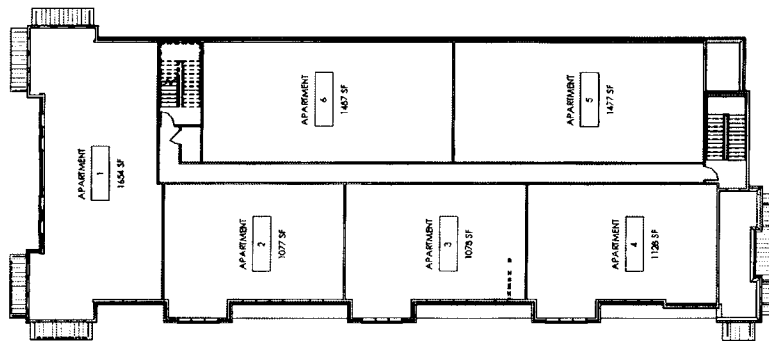


FIRST FLOOR PLAN



**WASHINGTON & CHURCH STREET
MIXED USE PROJECT**

**HOWERIN
CONSTRUCTION, CORP.**
4800B COLLEY AVE. NORFOLK, VA 23508



SECOND FLOOR PLAN

EXHIBIT "C"
REIMBUSABLE IMPROVEMENT COSTS

Reimbursement Phase	Reimbursement Amount
Phase 1. City approval building drawings, site plan, engineered drawings; demolition; AND has completion of proposed building through first floor slab.	\$181,500.00
Phase 2. Installation of water and sewer connections, perimeter fencing AND completion of the rough framing of the proposed building through the nailing inspection.	\$202,000.00
Phase 3. Installation of curb, gutter, stone base for parking lot, parking lot lighting AND has completion of roughing in all plumbing, electrical and heat and ac equipment in the proposed building.	\$250,000.00
Phase 4. Completion of parking lot, landscaping AND issuance of the certificate of occupancy on all residential portions of the proposed building.	\$220,000.00
Maximum Total Reimbursement Amount	\$853,500.00